

NOT FOR PUBLICATION

NO. 26259

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'ISTATE OF HAWAI'I, Plaintiff-Appellee, v.
RICHARD LOUIS ADAM, Defendant-AppellantAPPEAL FROM THE THIRD CIRCUIT COURT
(CR. NO. 99-19K)NORMA T. YARA
CLERK, APPELLATE COURTS
STATE OF HAWAII

2005 APR 20 AM 10:24

FILED

SUMMARY DISPOSITION ORDER

(By: Lim, Acting C.J., Foley and Fujise, JJ.)

Defendant-Appellant Richard Louis Adam (Adam) appeals from the Order of Resentencing/Revocation of Probation and the Judgment, both filed on December 1, 2003, in the Circuit Court of the Third Circuit (circuit court).^{1/} After a bench trial, Adam was found guilty of Criminal Contempt of Court, in violation of Hawaii Revised Statutes (HRS) § 710-1077(1)(g) (1993).^{2/} The circuit court also revoked Adam's probation for his prior convictions of Assault in the Second Degree and Terroristic Threatening in the First Degree and sentenced Adam to an "indeterminate period of FIVE (5) YEARS for each count, to run concurrent with each other and concurrent with sentence imposed

^{1/} The Honorable Ronald Ibarra presided.

^{2/} Hawaii Revised Statutes (HRS) § 710-1077(1)(g) (1993) provides:

§710-1077 Criminal contempt of court. (1) A person commits the offense of criminal contempt of court if:

(g) The person knowingly disobeys or resists the process, injunction, or other mandate of a court[.]

for Criminal Contempt of Court." Adam was sentenced on the Criminal Contempt of Court charge to thirty days of imprisonment.

On appeal,^{3/} Adam contends the circuit court (1) abused its discretion in revoking his probation and resentencing him to five years of imprisonment; (2) erred in ruling that Adam waived his right to a trial on his contempt charges before a different judge because it is a non-waivable constitutional right; (3) erred in ruling that Adam was in contempt of court for failing to appear on August 1, 2002; and (4) erred by ruling that Adam waived his right to a court-appointed attorney for sentencing.

Upon careful review of the record and the briefs submitted by the parties, we hold:

(1) The circuit court did not abuse its discretion in revoking Adam's probation and resentencing him. State v. Tauiliili, 96 Hawai'i 195, 198, 29 P.3d 914, 917 (2001).

(2) Adam fails to show a "clear and precise demonstration of prejudice" on the part of the circuit court judge. Aga v. Hundahl, 78 Hawai'i 230, 242, 891 P.2d 1022, 1034

^{3/} The opening brief of Defendant-Appellant Richard Louis Adam (Adam) fails to comply with Hawai'i Rules of Appellate Procedure (HRAP) Rule 28(b)(7) in failing to include in the argument section of the brief "citations to the . . . parts of the record relied on."

Pursuant to HRAP Rule 28(b) and (c), the State's answering brief fails to comply with HRAP 28(b)(3) and (7) by including only sporadic "record references supporting each statement of fact or mention of court . . . proceedings" in the statement of the case and no record references in the argument section of the brief.

(1995). The circuit court did not err in accepting Adam's decision not to request a trial before a different judge.

(3) There was substantial evidence to support the circuit court's conclusion that Adam wilfully disobeyed the court and was therefore guilty of Contempt of Court. State v. Brown, 70 Haw. 459, 463, 776 P.2d 1182, 1186 (1989).

(4) The circuit court found that Adam was "trying to deliberately delay" by failing to hire a private attorney or accepting a court-appointed attorney. Throughout his case, Adam had eight court-appointed attorneys. The circuit court did not abuse its discretion by sentencing Adam without granting Adam additional time to hire a private attorney. State v. Char, 80 Hawai'i 262, 267, 909 P.2d 590, 595 (App. 1995).

Because Adam failed to ensure that the October 13, 2003 transcript (the hearing where the circuit court approved Adam's last court-appointed attorney's motion to withdraw) was made a part of the record on appeal before this court, this court is precluded under State v. Hoang, 93 Hawai'i 333, 3 P.3d 499 (2000), from considering Adam's contention that the circuit court failed to comply with the requirements of Char and State v. Dickson, 4 Haw. App. 614, 673 P.2d 1036 (1983).

Therefore,

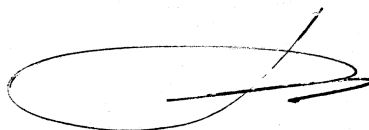
IT IS HEREBY ORDERED that the Judgment and Order of Resentencing/Revocation of Probation filed on December 1, 2003 in the Circuit Court of the Third Circuit are affirmed.

DATED: Honolulu, Hawai'i, April 20, 2005.

On the briefs:

Shawn A. Luiz
for defendant-appellant.

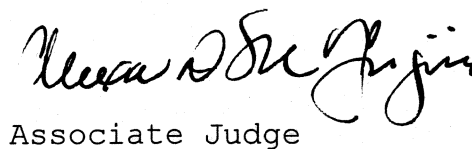
Dale Yamada Ross,
Deputy Prosecuting Attorney,
County of Hawai'i,
for plaintiff-appellee.



Acting Chief Judge



Associate Judge



Associate Judge